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(Title page)

IMPORTANT: Read instructions on back of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

State of Connecticut
REGULATION
of

NAME OF AGENCY
Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION
Requirements for Payment to Birth Centers

Section 1. The Regulations of Connecticut State Agencies are amended by adding sections 17b-262-956 to 17b-262-965, inclusive, as follows:

(NEW) Sec. 17b-262-956. Scope

Sections 17b-262-956 to 17b-262-965, inclusive, of the Regulations of Connecticut State Agencies set forth the Department of Social Services requirements for payment to birth centers that are medically necessary and are provided to clients who are determined to be eligible to receive such goods and services under Medicaid pursuant to section 17b-261 of the Connecticut General Statutes.

(NEW) Sec. 17b-262-957. Definitions

As used in sections 17b-262-956 to 17b-262-965, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Birth center" means a free-standing, separately licensed health care facility that is not a hospital, where a licensed practitioner performs low-risk deliveries;

(2) "Chronic disease hospital" has the same meaning as provided in section 19a-550 of the Connecticut General Statutes;

(3) "Client" means a person eligible for goods or services under Medicaid;

(4) "Commissioner" means the Commissioner of Social Services or the commissioner's designee;

(5) "Department" means the Department of Social Services or its agent;

(6) "Early Periodic Screening, Diagnosis and Treatment special services" or "EPSDT special services" means services that are not otherwise covered under Medicaid but which are nevertheless covered as EPSDT services for Medicaid-eligible children pursuant to 42 USC 1396d(r)(5) when the service is medically necessary, the need for the service is identified in an EPSDT screen, the service is provided by a participating provider, and the service is a type of service that may be covered by a state Medicaid agency and qualify for federal reimbursement under 42 USC 1396d;

(7) "Home" means the client's place of residence, including, but not limited to, a boarding house, community living arrangement or residential care home. "Home" does not include facilities

such as hospitals, chronic disease hospitals, nursing facilities, intermediate care facilities for the mentally retarded or other facilities that are paid an all-inclusive rate directly by Medicaid for the care of the client;

(8) "Hospital" means a "short-term hospital" as defined in section 19-13-D1 of the Regulations of Connecticut State Agencies;

(9) "Intermediate care facility for the mentally retarded" or "ICF/MR" means a residential facility for individuals with intellectual disabilities licensed pursuant to section 17a-227 of the Connecticut General Statutes and certified to participate in Medicaid as an intermediate care facility for the mentally retarded pursuant to 42 CFR 442.101, as amended from time to time;

(10) "Licensed practitioner" means a physician, physician assistant, nurse practitioner, nurse midwife or such other category of practitioner licensed by the department of public health pursuant to Title 20 of the Connecticut General Statutes and whose scope of practice includes the ante-partum, intra-partum and post-partum care of pregnant women and the care of newborns;

(11) "Low-risk delivery" means a delivery following a low-risk pregnancy that is anticipated to be normal, as determined by the mother's licensed practitioner acting within the licensed practitioner's scope of practice under state law;

(12) "Low-risk pregnancy" means a pregnancy that is anticipated to be normal, as determined by the mother's licensed practitioner acting within the licensed practitioner's scope of practice under state law;

(13) "Medicaid" means the program operated by the department pursuant to section 17b-260 of the Connecticut General Statutes and authorized by Title XIX of the Social Security Act;

(14) "Medical necessity" or "medically necessary" has the same meaning as provided in section 17b-259b of the Connecticut General Statutes;

(15) "Nursing facility" has the same meaning as provided in 42 USC 1396r(a) and is licensed pursuant to section 19-13-D8t of the Regulations of Connecticut State Agencies as a chronic and convalescent home or rest home with nursing supervision;

(16) "Nurse midwife" means a person licensed pursuant to section 20-86c of the Connecticut General Statutes;

(17) "Nurse practitioner" or "advance practice registered nurse" or "APRN" means a person licensed pursuant to section 20-94a of the Connecticut General Statutes;

(18) "Physician" means a person licensed pursuant to section 20-13 of the Connecticut General Statutes;

(19) "Physician assistant" means a person licensed pursuant to section 20-12b of the Connecticut General Statutes;

(20) "Prescription" means an original written order documenting medical necessity issued, signed and dated by a licensed practitioner;

(21) "Prior authorization" means approval from the department for the provision of a service or the delivery of goods before the provider actually provides the service or delivers the goods;

(22) "Provider" means a birth center enrolled with Medicaid pursuant to a valid provider enrollment agreement with the department; and

(23) "Usual and customary charge" means the amount that the provider accepts for the service or procedure in the majority of non-Medicaid cases. If the provider varies the charges so that no one amount is accepted in the majority of cases, usual and customary shall mean the median charge. Token charges for charity patients and other exceptional charges shall be excluded when calculating the usual and customary charge.

(NEW) Sec. 17b-262-958. Provider participation

(a) To enroll in Medicaid and receive payment from the department, a provider shall comply with sections 17b-262-956 to 17b-262-965, inclusive, of the Regulations of Connecticut State Agencies and sections 17b-262-522 to 17b-262-532, inclusive, of the Regulations of Connecticut State Agencies.

(b) A birth center shall:

(1) Be accredited by the Commission for the Accreditation of Birth Centers;

(2) be licensed by the Department of Public Health as a maternity hospital in accordance with section 19-13-D14 of the Regulations of Connecticut State Agencies or be licensed by the Department of Public Health as a birth center in accordance with regulations adopted by the Department of Public Health that specifically regulate birth centers; and

(3) comply with (A) section 19a-505 of the Connecticut General Statutes and (B) section 19-13-D14 of the Regulations of Connecticut State Agencies or such other regulations adopted by the Department of Public Health that specifically regulate birth centers.

(NEW) Sec. 17b-262-959. Need for service

Service in a birth center shall be limited to maternal patients who have had a low-risk pregnancy and are likely to have a low-risk delivery, as determined by the maternal patient's licensed practitioner.

(NEW) Sec. 17b-262-960. Eligibility

Payment to a provider for birth center services is available for clients who have a need for such products and services when the items are medically necessary, subject to the conditions and limitations set forth in sections 17b-262-956 to 17b-262-965, inclusive, of the Regulations of Connecticut State Agencies.

(NEW) Sec. 17b-262-961. Services covered and limitations

(a) The department shall pay the provider a single all-inclusive fee for a normal, uncomplicated labor and delivery, which covers all services provided by the birth center, including, but not limited to:

(1) Care for, labor, delivery and recovery of the maternal patient following delivery;

(2) nursery care and other services provided to the infant patient; and

(3) other ambulatory services within the provider's scope of services established by the Department of Public Health that are offered by the provider and that are otherwise covered by Medicaid.

(b) Surgical procedures at a birth center shall be limited to those normally accomplished during an uncomplicated birth, including episiotomy and repair.

(c) No general or regional anesthesia shall be administered at a birth center. Local anesthesia may be administered at a birth center if the administration of the anesthetic is performed within the scope of practice of the licensed practitioner in attendance.

(d) No abortions shall be done at a birth center.

(NEW) Sec. 17b-262-962. Payment and payment limitations

(a) The department shall reimburse the provider when the provider has met all the requirements of sections 17b-262-956 to 17b-262-965, inclusive, of the Regulations of Connecticut State Agencies.

(b) The department's payment to the provider includes all birth center charges, including, but not limited to: charges for labor, delivery, anesthesia, laboratory, radiology, pharmacy, nursing and other clinical staff care. The department shall not pay any other charges to the provider.

(c) The department shall not pay the provider for a delivery at home or in any setting other than the birth center, except for services described in subsection (d) of this section.

(d) If the client is transferred to a hospital prior to the actual delivery, the department shall reimburse the provider for services provided in the birth center prior to such transfer at the lower of billed charges or the reduced fee specified for such services on the department's fee schedule.

(e) If the delivery occurs at the birth center, the department shall pay the provider at the lower of the fee on the department's fee schedule or the provider's usual and customary rate.

(f) Payment to the provider excludes all services provided by a licensed practitioner. Each licensed practitioner shall bill the department for services in accordance with the regulations applicable to the licensed practitioner's provider type.

(NEW) Sec. 17b-262-963. Prior authorization

(a) The department shall require prior authorization for:

(1) Any service identified on the department's fee schedule as requiring prior authorization;

(2) EPSDT special services; and

(3) any service that is not identified on the department's fee schedule.

(b) To receive reimbursement from the department, a provider shall comply with all prior authorization requirements. The department, in its sole discretion, shall determine what information is necessary to approve a prior authorization request. Prior authorization does not guarantee payment unless all other requirements are met.

(c) The provider shall submit and sign the prior authorization request, in a form and manner specified by the department, which shall include documentation of medical necessity.

(d) A prescription is required from a licensed practitioner for all services and goods provided as EPSDT special services. The provider may attach a copy of the prescription from the licensed practitioner to the completed prior authorization request in lieu of the actual signature of the licensed practitioner on the prior authorization request form. The provider shall keep the licensed practitioner's original prescription on file and available for review by the department.

(NEW) Sec. 17b-262-964. Billing procedure

Providers shall submit claims on a hard copy invoice or by electronic transmission to the department in a form and manner specified by the department, together with all information required by the department to process the claim for payment.

(NEW) Sec. 17b-262-965. Documentation

(a) Providers shall maintain a specific record for all services provided to each client, including, but not limited to: name, address, birth date, Medicaid identification number, pertinent diagnostic information, treatment notes signed by the licensed practitioner, documentation of services provided and the dates the services were provided.

(b) Providers shall maintain all required documentation in its original form for at least five years or longer in accordance with applicable federal and state statutes and regulations, subject to review by authorized department personnel. If there is a dispute concerning a service provided, documentation shall be maintained until the end of the dispute, five years or the length of time required by statute or regulation, whichever is longest.

(c) The department may disallow and recover any amounts paid to the provider for which required documentation is not maintained or not provided to the department upon request.

(d) The department may audit all relevant records and documentation and take any other appropriate quality assurance measures it deems necessary to assure compliance with regulatory and statutory requirements.

(NEW) Sec. 17b-262-966. Reserved.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

The purpose of the regulation is to establish the rules for Medicaid payments to free-standing birth centers. Birth centers are independently licensed health care facilities where licensed practitioners perform low-risk deliveries.

(A) The problems, issues or circumstances that the regulation proposes to address: Section 2301 of the federal Patient Protection and Affordable Care Act, codified at 42 USC 1396d(a)(28) and 1396d(*l*)(3), requires states to provide Medicaid coverage for freestanding birth center services and other ambulatory services offered by a freestanding birth center and otherwise included in the Medicaid State Plan. Adopting regulations governing payment to birth centers is necessary to provide this mandatory coverage.

(B) The main provisions of the regulation: (1) establish requirements for birth center provider participation, including licensure and accreditation; (2) ensure that the birth center performs only low-risk deliveries; (3) describes the birth center services to be covered; and (4) sets payment methodologies for determining fee schedules and amounts.

(C) The legal effects of the regulation, including all of the ways that the regulation would change existing regulations or other laws: The proposed regulation will establish requirements for Medicaid payments to birth centers, coverage that is required by federal law. *See* 42 USC 1396d(a)(28) and 1396d(*l*)(3).

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(Certification page—see Instructions on back)

CERTIFICATION

This certification statement must be completed in full, including items 3 and 4, if they are applicable.

1) I hereby certify that the above *(check one)* ☒ Regulations ☐ Emergency Regulations

2) **are** *(check all that apply)* ☒ adopted ☐ amended ☐ repealed **by this agency pursuant to the following authority(ies):** *(complete all that apply)*

a. Connecticut General Statutes section(s) 17b-262.

b. Public Act Number(s) _____.
(Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)

3) And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the *Connecticut Law Journal* on April 17, 2012;
(Insert date of notice publication if publication was required by CGS Section 4-168.)

4) And that a public hearing regarding the proposed regulations was held on [none];
(Insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)

5) **And that said regulations are EFFECTIVE** *(check one, and complete as applicable)*

☐ When filed with the Secretary of the State

OR ☒ on *(insert date)* April 1, 2012

DATE	**SIGNED** ***(Head of Board, Agency or Commission)***	OFFICIAL TITLE, DULY AUTHORIZED
June 27, 2012		Commissioner

APPROVED *by the* ***Attorney General*** *as to legal sufficiency in accordance with CGS Section 4-169, as amended*

DATE	SIGNED *(Attorney General or AG's designated representative)*	OFFICIAL TITLE, DULY AUTHORIZED

Proposed regulations are ***DEEMED APPROVED*** *by the Attorney General in accordance with CGS Section 4-169, as amended, if the attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.*

(For Regulation Review Committee Use ONLY)

☐ Approved ☐ Rejected without prejudice

☐ Approved with technical corrections ☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Deemed approved pursuant to CGS Section 4-170(c)

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED *(Administrator, Legislative Regulation Review Committee)*

Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

DATE	SIGNED *(Secretary of the State)*	BY

(For Secretary of the State Use ONLY)

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GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)

2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Sections 4-168 and 4-170 as amended by Public Act 11-150, Sections 18 and 19.)

3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)

4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)

5. Existing language to be deleted must be enclosed in brackets [ ]. (See CGS 4-170(b).)

6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)

7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)

8. The Certification Statement portion of the form must be completed, including all applicable information regarding *Connecticut Law Journal* notice publication date(s) and public hearing(s). (See more specific instructions below.)

9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: http://www.cga.ct.gov/rr/ .

10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS
(Numbers below correspond to the numbered sections of the statement)

1. Indicate whether the regulation is a regular or an emergency regulation adopted under the provisions of CGS Section 4-168(f).

2. a) Indicate whether the regulations contains newly adopted sections, amendments to existing sections, and/or repeals existing sections. Check all cases that apply.

   b) Indicate the specific legal authority that authorizes or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.

3. Except for emergency regulations adopted under CGS 4-168(f), and technical amendments to an existing regulation adopted under CGS 4-168(g), an agency must publish notice of its intent to adopt a regulation in the *Connecticut Law Journal*. Enter the date of notice publication.

4. CGS Section 4-168(a)(7) prescribes requirements for the holding of an agency public hearing regarding proposed regulations. Enter the date(s) of the hearing(s) held under that section, if any; also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law.

5. As applicable, enter the effective date of the regulation here, or indicate that it is effective upon filing with the Secretary of the State. Please note the information below.

   Regulations are effective upon filing with the Secretary of the State or at a later specified date. See CGS Section 4-172(b) which provides that each regulation is effective upon filing, or, if a later date is required by statute or specified in the regulation, the later date is the effective date. An effective date may not precede the effective date of the public act requiring or permitting the regulation. Emergency regulations are effective immediately upon filing with the Secretary of the State, or at a stated date less than twenty days thereafter.